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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,203	11/13/2001	Gregory S. Sprehe	021276-9047-02	7145
23418	7590	05/12/2004	EXAMINER	
VEDDER PRICE KAUFMAN & KAMMHÖLZ 222 N. LASALLE STREET CHICAGO, IL 60601			SAKRAN, VICTOR N	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 05/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/054,203

Applicant(s)

SPREHE, GREGORY B.

Examiner

VICTOR N SAKRAN

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 13-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 9, 10, 26-28, 34, 35 and 38 is/are rejected.
- 7) ☒ Claim(s) 4-8, 11, 12, 29-33, 36 and 37 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date February 17, 2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-12 and 26-38, drawn to a reclosable fastener, classified in class 24, subclass 399.
 - II. Claims 13-25, drawn to a bag, classified in class 383, subclass 63.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as a binder for the edges of individual leaves of material and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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4. During a telephone conversation between Examiner Jes F. Pascua and applicant's representative, Mr. Robert S. Beiser, on 03/10/04 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-12 and 26-38. Affirmation of this election must be made by applicant in replying to this Office action. Claims 13-25 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

DETAILED ACTION

Claim Objections

Claims 11 and 36 are objected to because of the following informalities: since the term "elongated member" as recited in said claims has no proper antecedent basis for the specification. Appropriate correction and clarification is required.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3, 9,10, 26-28, 34, 35 and 38, are rejected under 35 U.S.C. 103(a) as being unpatentable over Kapperman et al U. S. Patent No. 6,004,032 in view of Tomiic U. S. Patent No. 5,403,094.

Kapperman et al discloses the general combination claimed of a releasable fastener for sealing a closing bag comprising first and second continuous, elongated profile strips, each of said strips having first and second hooks disposed adjacent each other and at one end of the strip, wherein said hooks defining a plurality of recesses dimensioned to interlock with the hook of the opposing strip for sealing said bag including at least one recess formed on each of said strips and dimensioned not to receive a hook but a post or projection; see Figures 2, 3, 19-21; the abstract; column 4, lines 44-64; column 14, lines 38-50, and claim 1, except for the hook member having a half arrowhead-shaped tip, a concave tail, and a generally upstanding neck connecting the tip and the tail. Tomiic discloses first and second profile strips for sealing a bag, each of said strips having a plurality of hooks, each of said hooks comprises a half arrowhead-shaped tip, a concave tail, and a generally upstanding neck connecting the tip and the concave tail together forming a tight interlocking seal for the bag; see Figures 1, 2; column 2, lines 57-68, and claim 1. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the shape of the hook elements in Kapperman et al in order to perform the desired function to form an airtight and watertight seal for its bag in

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the manner taught, disclosed and suggested by Tomic; especially, since such modification (changing the shape of the hook) involves only routine skill in the art.

Moreover, the particular shape of the various elements is considered to be no more than a matter of design choice obvious to one having ordinary skill within the art at the time the invention was made, especially, since it has been held that the particular change in shape of an element in a prior art device is such a change considered no more than an obvious matter of design choice to one having ordinary skill within in the art. See *In Re Dailey*, 357 F. 2d 669, 149 USPQ 47 (CCPA 1954).

Furthermore, the particular range of dimensions of the head portion and the , neck portion of the hook including the cross-sectional width of the recess element as recited in claims 9, 10, 34 and 35, are considered to be no more than an obvious matter of design choice; especially, since it has been held that where the general conditions of a claim are disclosed in the prior art, therefore, discovering the optimum or workable ranges is also involves only routine skill in the art. See *In Re Aller*, 105 USPQ 233.

Moreover, Applicant is reminded that in considering the disclosure of a reference, it is proper to take into account not only specific teaching of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom; see *In re Preda*, 401 F2d 825, 826, 159 USPQ 342,344 (CCPA1968).

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Claims 4-8, 11, 12, 29-33, 36 and 37, are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 13-25, are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse on March 10, 2004.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant's attention is directed to the art cited herein, and of record, as showing structure related to Applicant's disclosed invention.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTOR N SAKRAN whose telephone number is 703-308-2224. The examiner can normally be reached on 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. swann can be reached on 703-308-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

May 6, 2004


VICTOR N SAKRAN
Primary Examiner
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